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In the Supreme Court of the United States

OCTOBER TERM, 1971

No.

UNITED STATES OF AMERICA, APPELLANT

v.

JAMES JIM, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

JURISDICTIONAL STATEMENT

OPINION BELOW

The interlocutory decree and order of the district court (App. A, *infra*, pp. 14-16) and the court's findings of fact and conclusions of law (App. B, *infra*, pp. 17-28) are not reported.

JURISDICTION

This suit was brought under 28 U.S.C. 1331 and 2201 by James Jim and others as representatives of

all Indians living on the Aneth extension of the Navajo Indian Reservation in Utah to declare the Act of May 17, 1968, 82 Stat. 121, unconstitutional and to obtain an accounting by the State of Utah. The United States intervened pursuant to 28 U.S.C. 2403, in support of the Act's constitutionality. The district court's interlocutory decree and order declaring the Act unconstitutional were entered on February 17, 1972. Notice of appeal was filed by the United States on March 20, 1972 (App. C, *infra*, pp. 29-30). The jurisdiction of this Court is conferred by 28 U.S.C. 1252 and 2101(a). *Fleming* v. *Rhodes*, 331 U.S. 100; *United States* v. *Raines*, 362 U.S. 17.

QUESTION PRESENTED

Whether Public Law 90-306 (82 Stat. 121) violates the Fifth Amendment in that without providing compensation for those whose interests are thereby diminished it enlarges the class of beneficiaries of a portion of the proceeds from oil and gas leases in the Aneth extension of the Navajo Indian Reservation in Utah by providing that the funds shall be used for the benefit of all Navajo Indians residing in San Juan County, Utah, rather than particularly for the benefit of the Indians residing in the Aneth extension (a portion of San Juan County), as had been provided by Public Law 403 of the 72d Congress (47 Stat. 1418).

STATUTES INVOLVED

The pertinent provisions of the 1933 Act (47 Stat. 1418) are as follows:

That all vacant, unreserved, and undisposed of public lands within the areas in the southern part of the State of Utah, bounded as follows:
* * *

[description omitted]

be, and the same are hereby, permanently withdrawn from all forms of entry or disposal for the benefit of the Navajo and such other Indians as the Secretary of the Interior may see fit to settle thereon: *Provided*, That no further allotments of lands to Indians on the public domain shall be made in San Juan County, Utah, nor shall further Indian homesteads be made in said county under the Act of July 4, 1884 (23 Stat. 96; U.S.C., title 43, sec. 190). Should oil or gas be produced in paying quantities within the lands hereby added to the Navajo Reservation, 37½ per centum of the net royalties accruing therefrom derived from tribal leases shall be paid to the State of Utah: *Provided*, That said 37½ per centum of said royalties shall be expended by the State of Utah in the tuition of Indian children in white schools and/or in the building or maintenance of roads across the lands described in section 1 hereof, or for the benefit of the Indians residing therein.

The pertinent provisions of the 1968 Act (82 Stat. 121) are as follows:

That section 1 of the Act of March 1, 1933 (47 Stat. 1418), is amended by deleting all of that part of the last proviso of said section 1 after the word "Utah" and inserting in lieu thereof: "for the health, education, and general

welfare of the Navajo Indians residing in San Juan County. Planning for such expenditures shall be done in cooperation with the appropriate departments, bureaus, commissions, divisions, and agencies of the United States, the State of Utah, the county of San Juan in Utah, and the Navajo Tribe, insofar as it is reasonably practicable, to accomplish the objects and purposes of this Act. Contribution may be made to projects and facilities within said area that are not exclusively for the benefits of the beneficiaries hereunder in proportion to the benefits to be received therefrom by said beneficiaries, as may be determined by the State of Utah through its duly authorized officers, commissions, or agencies. An annual report of its accounts, operations, and recommendations concerning the funds received hereunder shall be made by the State of Utah, through its duly authorized officers, commissions, or agencies, to the Secretary of the Interior and to the Area Director of the Bureau of Indian Affairs for the information of said beneficiaries."

STATEMENT

In 1933, Congress added two segments of land in southern Utah (herein referred to as the Aneth extension) to the Navajo Indian Reservation. The larger segment had previously been made part of the Navajo reservation by executive orders of 1884 and 1908. In 1922, however, it was restored to its former status as public land (H. Rep. No. 1883, 72d Cong., 2d Sess.). After 1922, there was exploration for oil and gas within this area. Although no significant

oil discoveries were made, the State of Utah expressed its unwillingness to have this area restored to the Navajo Reservation unless the State would receive 37½ percent of the royalties from any oil or gas discovered on this land. After 1925, various bills were introduced in Congress to restore this land to the Navajo Reservation and to settle the question of oil and gas royalties. In a report to Congress on the matter in 1932, a special commissioner stated (S. Doc. No. 64, 72d Cong., 1st Sess., 39-40, and in general 38-44, 57-58, 77, 118):

> On January 22, 1931, H. R. 16464 was introduced by Hon. Don. B. Colton, of Utah, which again proposed that this land be restored to the Western Navajo jurisdiction. There are now a large number of Indians occupying this strip.
>
> H. R. 16464 was, we believe, unfavorably considered in committee because it contained a provision that 37½ per cent of the royalties which might be derived from oil discoveries on this land should go to the State of Utah. Since 1922, when the strip was restored to entry, there has been expended a large sum of money in prospecting for oil but no pay oil has been developed, and it is now generally believed that none will be. However, the State of Utah is unwilling to see this area restored to the reservation unless this proviso is in the bill. The matter was fully discussed at the Navajo Tribal Council held at Fort Wingate in 1931 in the presence of Commissioner Rhoads, and the Indians expressed their willingness that the proviso should be in the bill. What they want is control of the land

> for grazing and they are not much interested in the oil prospects there, especially since they are now convinced that there is no oil.

In the following year, Congress passed Public Law 403 (the 1933 Act). The Act added the Aneth extension to the Navajo Indian Reservation and gave the State of Utah the right to receive 37½ per cent of the royalties from any oil or gas produced from this land. But Congress added the proviso,

> That said 37½ per cent of said royalties shall be expended by the State of Utah in the tuition of Indian children in white schools and/or in the building or maintenance of roads across the lands described in section 1 hereof [the Aneth extension], or for the benefit of the Indians residing therein.

The remaining 62½ percent by implication would be received by the Navajo Tribe without limitation as to its use.

Oil and gas were then discovered on the Aneth extension, and the Navajo Indian Tribe has received 62½ percent of the royalties from these leases; the other 37½ percent has gone to the State of Utah for the purposes expressed in the 1933 Act (Finding 13, App. B, *infra*, p. 22).

In 1968 (82 Stat. 121, *supra*, pp. 3-4) Congress amended the 1933 Act. The committee reports gave the following reasons for the amendment: (1) differing interpretations of the word "tuition" in the 1933 Act resulted in litigation and left the Utah Indian Affairs Commission in doubt about how broad

an educational program it could administer with the royalty funds; (2) it was difficult properly to plan for construction of roads only within the areas specified in the proviso to the 1933 Act; (3) tuition and road construction needs were met for the most part from other federal programs; and (4) many Navajo families do not live permanently within the Aneth extension, but move back and forth between this area and other locations, thus making it difficult to determine which Indians qualified as "residents" under the Act. (S. Rep. No. 710, 90th Cong., 1st Sess.; H. Rep. No. 1324, 90th Cong., 2d Sess.) Congress, with the approval of the Navajo Tribe (H. Rep. No. 1324, 90th Cong., 2d Sess., p. 5), therefore amended the Act so that royalties received by the State of Utah from oil and gas leases on the Aneth extension could be expended more generally "for the health, education, and general welfare of the Navajo Indians residing in San Juan County [Utah]" (82 Stat. 121).

In the present case the plaintiffs, as representatives of all the Indians residing on the Aneth extension, brought a class action in the district court against the State of Utah for a declaratory judgment that the 1968 Act is unconstitutional, for an accounting by the State and for other relief. The United States intervened pursuant to 28 U.S.C. 2403 in support of the constitutionality of the Act. The district court found that the class represented by plaintiffs, by virtue of the 1933 Act and prior judicial interpretation of it, were the sole beneficial owners of 37½ percent of the royalties derived from tribal

leases on the Aneth extension, and that the 1968 amendment of the 1933 Act enlarged the class of beneficiaries of these royalties from approximately 1,500 Indians residing on the Aneth extension to approximately 15,000 Navajo Indians residing in San Juan County, Utah (App. B, *infra*, p. 24). The court concluded that the legal effect of the 1933 Act had been a complete disclaimer on the part of the United States of any right, title or interest in the Aneth extension, including all minerals therein (*id.* at 26). In the interlocutory decree and order (App. A, *infra*) the court held the 1968 Act of Congress unconstitutional on the ground that it deprived the plaintiffs, and the class they represent, of their title to the 37½ percent royalties in violation of the Fifth Amendment to the Constitution (*id.* at pp. 15-16).

THE QUESTIONS ARE SUBSTANTIAL

The district court in this case has declared unconstitutional the 1968 Act adopted by Congress to make the proceeds from oil and gas leases on the Navajo Reservation of greater benefit to the Tribe by broadening the uses to which those proceeds can be put. Its decision, which we believe erroneous, is apparently based on a rationale which would deprive Congress and the Department of the Interior of the ability to make needed changes in the management of Indian lands without giving compensation to individuals never heretofore considered to have compensable property rights in tribal lands.

1. Under the 1933 Act, which made the Aneth extension a part of the Navajo Reservation, the entire Navajo Tribe has received, and continues to receive, 62½ percent of the royalties from the oil and gas leases on the Aneth extension. A compromise was reached giving the State of Utah management of the remaining 37½ percent (see *supra* p. 6), but nothing in the 1933 Act indicates the vesting of a property interest in the particular individuals who might expect to benefit from the expenditures of these funds that the Act authorized Utah to make. Under settled principles, whatever vested interests might exist in the royalties from oil and gas leases on any portion of the Navajo Reservation are vested in the Navajo Tribe,[1] not in any individual or groups of individual Indians. For the general rule with respect to reservation lands is that "Whatever title the Indians have is in the tribe, and not in the individuals, although held by the tribe for the common use and equal benefit of all the members."[2] *Cherokee Na-*

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[1] There is no need in the present case to determine whether the 1933 Act conferred any property interest in these royalties on the Tribe—a matter which depends on the language and purpose of the Act (*Hynes* v. *Grimes Packing Co.*, 337 U.S. 86, 103).

[2] For similar reasons, plaintiffs' reliance in the district court on a claim of aboriginal title antedating the 1933 Act provides no apparent basis for giving them as individuals a superior claim to that of the Tribe in these lands. In any event, rights claimed only by aboriginal title, and never recognized by Congress in a statute or treaty, can be terminated and the lands disposed of by Act of Congress without

tion v. *Hitchock*, 187 U.S. 294, 307. See also *Delaware Indians* v. *Cherokee Nation*, 193 U.S. 127, 136. Indeed, we know of no case in which individuals or groups of individuals within a tribe have been held to possess a vested property interest in tribal land or tribal funds. And prior litigation concerning proper expenditure of the royalty funds under the 1933 Act did not raise, much less settle, any question of a property interest in the royalties on the part of residents of the Aneth extension. See *Sakezzie* v. *Utah Indian Affairs Commission*, 198 F. Supp. 218, 215 F. Supp. 12 (D. Utah).

Although the particular language and background of the two statutes involved here preclude any exact precedent, *Gritts* v. *Fisher*, 224 U.S. 640, was a similar case. The situation was the following: By an Act of Congress of 1902, lands and funds of the Cherokee Indian Tribe could be allotted and distributed among the members of the Tribe living on September 1, 1902. By an Act of Congress of 1906, Cherokee children living on March 4, 1906, were allowed to participate in the allotment and distribution. This enlargement of the number of participants by the 1906 Act diminished the share available for those provided for in the 1902 Act. Those covered by the earlier Act brought suit contending that their vested interest in the lands and funds had been impaired by

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any legal obligation to provide compensation. *Tee-Hit-Ton Indians* v. *United States*, 348 U.S. 272, 279; *United States* v. *Sante Fe Pacific R. Co.*, 314 U.S. 339, 347.

the subsequent legislation. This Court rejected the contention, stating (224 U.S. at 648):

> [I]t is said that the act of 1902 contemplated that they alone [those members living on September 1, 1902] should receive allotments and be the participants in the distribution of the remaining lands, and also of the funds, of the tribe. No doubt such was the purport of the act. But that, in our opinion, did not confer upon them any vested right such as would disable Congress from thereafter making provision for admitting newly born members of the tribe to the allotment and distribution. The difficulty with the appellants' contention is that it treats the act of 1902 as a contract, when it is only an act of Congress and can have no greater effect.' * * * [Citation omitted.] It was but an extension of the administrative control of the Government over the tribal property of tribal Indians, and was subject to change by Congress at any time before it was carried into effect and while the tribal relations continued.

Similarly in the present case, we submit, Congress had the power to enlarge the class of Indian beneficiaries of the oil and gas royalties and to broaden the purposes for which these royalties collected by the State could be spent under the 1933 Act.[3]

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[3] Compare, in another context, *Chase Securities Corp.* v. *Donaldson*, 325 U.S. 304, holding that a state statute lifting the bar of a statute of limitations so as to restore a lapsed action against the complainant is not a taking of his property. See also *Fletcher* v. *Felker*, 97 F. Supp. 755 (W.D. Ark.); *Opinion of the Justices*, 337 Mass. 786, 151 N.E. 2d 475; *In re Bachmann's Estate*, 151 Misc. 761, 272 N.Y.S. 467, all

2. Moreover, whatever special benefit the 1933 Act conferred on the particular Indians residing in the Aneth extension was no more than a gratuity or privilege which Congress could and did withdraw by a subsequent Act. "The benefits conferred by gratuities may be redistributed or withdrawn at any time in the discretion of Congress." *Lynch* v. *United States*, 292 U.S. 571, 577. See also *Cummings* v. *Deutsche Bank and Discontogesellschaft*, 300 U.S. 115, 122-124; *Maricopa County* v. *Valley National Bank of Phoenix*, 318 U.S. 357, 362. The residents of the Aneth extension in 1933 gave up nothing to receive the congressional gratuity of being the beneficiaries of 37½ percent of the royalties; nor were they interested in oil or gas discoveries since they believed in 1933 that no oil or gas existed on the Aneth extension; they only wanted this area added to the Navajo Reservation so they could continue to graze their flocks there.

It was, therefore, entirely proper and constitutional for Congress in 1968 to provide for more equitable and useful expenditure of the Reservation's oil and gas royalties on behalf of members of the Tribe.

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holding that before her husband's death a wife's right of dower is not a vested right in property precluding subsequent legislative modification or destruction without compensation. See also the cases cited in point 2, *infra*.

CONCLUSION

For the foregoing reasons, probable jurisdiction should be noted.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

KENT FRIZZELL,
Assistant Attorney General.

HARRY R. SACHSE,
Assistant to the Solicitor General.

EDMUND B. CLARK,
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Attorneys.

MAY 1972.

APPENDIX A

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH CENTRAL DIVISION

Civil No. 21-70

[Filed in United States District Court, District of Utah. Time: Feb. 17, 1972. /s/ Andrew John Brennan, Clerk.]

JAMES JIM, TOM BELETSO, SETH BIGMAN, and DAVID KING, PLAINTIFFS

vs.

STATE OF UTAH, UTAH BOARD OF INDIAN AFFAIRS, JOHN BOYDEN, LYMAN TYLER, DON E. SMITH, TINA WILLIE, HOMEY SECAKUKU, FRANK TIMBIMBOO and MCKAY PICKYVIT, DEFENDANTS,

UNITED STATES OF AMERICA, INTERVENOR

INTERLOCUTORY DECREE AND ORDER

The above case was heard by the Court sitting without a jury. In order to accommodate witnesses, some of whom were old and unable to travel, hearings were held at Ol Jato on the Navajo Indian Reservation where oral and written testimony was received. Other hearings were held at which points of law were argued by respective counsel. The last hearing was held on August 23, 1971 where all issues were argued except those hereinafter reserved for later determination. Plaintiffs, defendants and intervenor rested and submitted the matter to the Court for determination and decision.

Plaintiffs were represented at said hearings by their attorneys and the defendants were represented

by the Attorney General of the State of Utah through his Special Assistant. The United States of America was represented at all hearings after entering its special appearance by the United States District Attorney for the District of Utah. The parties were given an opportunity to submit briefs and to present argument to the Court. The Court having made its Findings of Fact and Conclusions of Law, now ORDERS, ADJUDGES AND DECREES as follows:

1. The plaintiffs and the class of Indians represented by them are the beneficial owners of 37½% of all royalties derived from tribal oil and gas leases covering lands located in the Aneth Extension of the Navajo Indian Reservation, which Extension is more particularly described in the Findings of Fact and Conclusions of Law on file herein. The title to and ownership of such royalties is a community title.

2. The state of Utah holds the title to said 37½% royalty funds as trustee as provided in Public Law No. 403 enacted by Congress of the United States, March 1, 1933 (47 Stat. 1418) (hereinafter referred to as the "1933 Act") and as determined by this Court in Sakezzie, et al. vs. The Utah State Indian Affairs Commission, et al.

3. The Act of Congress of the United States amending the 1933 Act by Public Law No. 90-306 (82 Stat. 121) dated May 17, 1968, (hereinafter referred to as the "1968 Amendment") enlarged the class of beneficiaries of said 37½% royalties from approximately 1,500 Indians residing on the Aneth Extension to include all Navajo Indians residing in San Juan County, Utah, which number approximately 15,000 and deprives the plaintiffs of their title and ownership of said 37½% royalties, in violation of Amendment V to the Constitution of the United

States and is unconstitutional and invalid insofar as it dilutes the plaintiffs' title and ownership and changes the purposes for which such royalty funds may be expended.

4. Defendants hereby are ordered and directed, within thirty (30) days from the date hereof, to file with the Court those monthly written reports decreed in Sakezzie, et al. vs. The Utah State Indian Affairs Commission, et al., for the periods from February 25, 1963 to May 17, 1968, and from May 17, 1968 to the present. Said written reports shall show the amount of the fund, new increments, administrative expenses charged against the fund, other expenditures or disbursements from the fund, including the person or persons to whom the disbursements were made and the purposes of said disbursements, commitments against the fund, whether tentative or permanent but not expended, and a description of the projects which may involve future expenditures or disbursements from said fund.

5. A final judgment and decree declaring the rights, duties and liabilities in accordance with the Findings of Fact and Conclusions of Law and the said accounting will be made and entered after review of said accounting by the Court.

6. The Court retains jurisdiction of this action until a full accounting as required herein has been made and, to make such further appropriate Findings of Fact, Conclusions of Law, Orders and Decrees as may be appropriate in the premises.

Signed this 17 day of Feb., 1972.

/s/ Willis W. Ritter
Chief Judge
United States District Court
for the District of Utah,
Central Division

APPENDIX B

FINDINGS OF FACT AND CONCLUSIONS OF LAW

[Caption Omitted in Printing]

The above case was heard by the Court sitting without a jury. In order to accommodate witnesses, some of whom were old and unable to travel, hearings were held at Ol Jato on the Navajo Indian Reservation where oral and written testimony was received. Other hearings were held at which points of law were argued by respective counsel. The last hearing was held on August 23, 1971 where all issues were argued except those hereinafter reserved for later determination. Plaintiffs, defendants and intervenor rested and submitted the matter to the Court for determination and decision.

Plaintiffs were represented at said hearings by their attorneys and the defendants were represented by the Attorney General of the State of Utah through his Special Assistant. The United States of America was represented at all hearings after entering its special appearance by the United States District Attorney for the District of Utah. The parties were given an opportunity to submit briefs and to present argument to the Court. The Court having considered the evidence, the briefs and the arguments of counsel and being fully advised in the premises, now makes and enters its Findings of Fact and Conclusions of Law as follows:

FINDINGS OF FACT

1. Plaintiffs are citizens of the State of Utah and reside on what is known as the Aneth Extension of

the Navajo Indian Reservation in San Juan County, Utah.

2. Defendants Don E. Smith, Tina Willie, Homey Secakuku, Frank L. Timbimboo and McKay Pickyvit are, and at all times material hereto have been duly qualified members of the Utah Board of Indian Affairs.

3. When the complaint was filed, defendants John Boyden and Lyman Tyler were duly qualified members of the Utah Board of Indian Affairs. Their terms on said Board have expired and they have been replaced by defendants Robert Billie and J. Clark Ballard, who have been and now are duly appointed members of said Board.

4. The Utah Board of Indian Affairs is an agency of the State of Utah charged with the administration and expenditure of the oil and gas royalties involved in this action. It is the successor of the Utah Commission of State Indian Affairs.

5. This action arises under the Constitution and laws of the United States of America, particularly Amendment V, and 47 Stat. 1418. The amount in controversy is in excess of $10,000 exclusive of interest and costs.

6. Jurisdiction to hear and determine this action is conferred by 28 U.S.C. § 1331 and 28 U.S.C. § 2201.

7. Pursuant to 28 U.S.C. § 2403 certification was given to the Attorney General of the United States that this action challenged the constitutionality of an Act of Congress. Following said notice the United States was permitted to intervene for the purposes specified in said statute.

8. The action is properly maintainable as a class action pursuant to Rule 23 (a) and 23 (b) (2), Federal Rules of Civil Procedure in that the class is

so numerous that joinder of all members is impracticable; the questions of law and fact raised are common to the class; the claims of the plaintiffs are typical of the claims of the class; the plaintiffs in their representative capacity will fairly and adequately protect the interests of the class; and the defendants have acted and refused to act on grounds generally appplicable to the class thereby making appropriate relief with respect to the class as a whole.

9. Plaintiffs are members of the class which consists of approximately 1,500 Indians residing on the Aneth Extension of the Navajo Indian Reservation.

10. The members of this class consist of those Indians who now reside on the Aneth Extension and such other Indians as the Secretary of Interior may see fit to settle thereon. The Secretary has not located other Indians on said Aneth Extension.

11. Public Law No. 403, 72nd Congress (47 Stat. 1418), enacted by the Congress of the United States and dated March 1, 1933 (hereinafter referred to as the "1933 Act") added the Aneth Extension to the Navajo Indian Reservation and created a royalty for the benefit of plaintiffs and the class they represent, with the full text of said Act providing as follows:

> That all vacant, unreserved, and undisposed of public lands within the areas in the southern part of the State of Utah, bounded as follows:
>
> > Beginning at a point where the San Juan River intersects the one hundred and tenth degree of west longitude; thence down said river to its confluence with the Colorado River; thence down the Colorado River to a point where said river crosses the boundary line between Utah and Arizona; thence east

along said boundary line to the one hundred and tenth degree of west longitude; thence north to the place of beginning; also beginning at a point where the west rim of Montezuma Creek or wash intersects the north boundary line of the Navajo Indian Reservation in Utah; thence northerly along the western rim of said creek or wash to a point where it intersects the section line running east and west between sections 23 and 25, township 39 south, range 24 east, Salt Lake base and meridian in Utah; thence eastward along said section line to the northeast section corner of section 26, township 39 south, range 25 east; thence south one mile along the section line between sections 25 and 26 to the southeast section corner of section 26, township 39 south, range 26 east; thence eastward along the section line between sections 25 and 36, township 39 south, range 25 east, extending through township 39 south, range 26 east, to its intersection with the boundary line between Utah and Colorado; thence south along said boundary line to its intersection with the north boundary line of the Navajo Indian Reservation; thence in a westerly direction along the north boundary line of said reservation to the point of beginning be, and the same are hereby, permanently withdrawn from all forms of entry or disposal for the benefit of the Navajo and such other Indians as the Secretary of the Interior may see fit to settle thereon: Provided, That no further allotments of lands to Indians on

the public domain shall be made in San Juan County, Utah, nor shall further Indian homesteads be made in said county under the Act of July 4, 1884 (23 Stat. 96; U.S.C., title 43, sec. 190). Should oil or gas be produced in paying quantities within the lands hereby added to the Navajo Reservation, 37½ per centum of the net royalties accruing therefrom derived from tribal leases shall be paid to the State of Utah: Provided, That said 37½ per centum of said royalties shall be expended by the State of Utah in the tuition of Indian children in white schools and/or in the building or maintenance of roads across the lands described in section 1 hereof, or for the benefit of the Indians residing therein.

Sec. 2. That the State of Utah may relinquish such tracts of school land within the areas added to the Navajo Reservation by section 1 of this Act as it may see fit in favor of the said Indians, and shall have the right to select other unreserved and nonmineral public lands contiguously or noncontiguously located within the State of Utah, equal in area and approximately of the same value to that relinquished, said lieu selections to be made in the same manner as is provided for in the Enabling Act of July 16, 1894 (28 Stat. L. 107), except as to the payment of fees or commissions which are hereby waived.

12. Plaintiffs and their ancestors for generations prior to the enactment of the 1933 Act and prior to the settlement of San Juan County by those they identify as "Anglo Americans" lived in the area

known as the Aneth Extension as a definable group. During said time and until the present, they have farmed and grazed their livestock on said lands and have recognized and respected specific territorial boundaries between each other on the reserved lands and between themselves and "Anglo Americans" outside of said reservation.

13. Following the enactment of the 1933 Act, oil and gas were discovered on the lands identified in said Act. This discovery, which is known as the Aneth Oil Field, produced tribal royalties, 37½% of which have been and are now being paid to the defendant, State of Utah, in accordance with said Act.

14. The State of Utah, by legislative act, delegated to The Commission of State Indian Affairs the administration and expenditure of said royalties. Thereafter, the State of Utah, by further legislative enactment, created the defendant, Utah Board of Indian Affairs, and transferred to said Board all of the functions, powers, duties, rights, and responsibilities theretofore delegated to The Commision of State Indian Affairs. The Utah Board of Indian Affairs is now and at all times referred to herein was charged with the responsibility of the administration and expenditure of said royalties for the uses and purposes set forth in the 1933 Act.

15. Title and ownership of the 37½% oil and gas royalties derived from leases covering lands in the Aneth Extension has heretofore been determined by this Court in the following case:

> Hosteen Sakezzie and Thomas Billy, in their own behalf and as representatives of and members of the class of persons who are Navajo Indians residing within the Aneth Extension of the Nav-

ajo Indian Reservation in San Juan County, Utah, Plaintiffs,

vs.

The Utah State Indian Affairs Commission and its members, Beverly S. Clendenin, Chairman, Harold Drake and Don Smith, members of said Commission, Defendants, (Case No. C-55-61; 198 F.Supp. 218 (1961) Supplemental Proceedings 215 F.Supp. 12) (1963).

16. In the Sakezzie case, this Court concluded that plaintiffs, as members of a class, were entitled to institute the action on behalf of the Indians defined in the 1933 Act, who this Court finds are the same Indians, as a class, who are represented by plaintiffs in this proceeding. The Court in the Sakezzie case determined that the class was the sole beneficial owner of 37½% of the royalties derived from tribal leases on the Aneth Extension. No appeal was taken from the judgment and the same has become final and is res judicata between the said parties as to the right to the beneficial use and ownership of said royalties as provided in the "1933 Act."

17. In 1968, the Congress of the United States amended the 1933 Act by Public Law No. 90-306, 90th Congress (82 Stat. 121) dated May 17, 1968, (hereinafter referred to as the "1968 Amendment"), which provided as follows:

> Section 1 of the Act of March 1, 1933 (47 Stat. 1418), is amended by deleting all of that part of the last proviso of said section 1 after the word "Utah" and inserting in lieu thereof: "for the health, education, and general welfare of the Navajo Indians residing in San Juan County. Planning for such expenditures shall be done in

cooperation with the appropriate departments, bureaus, commissions, divisions, and agencies of the United States, the State of Utah, the county of San Juan in Utah, and the Navajo Tribe insofar as it is reasonably practicable, to accomplish the objects and purposes of this Act. Contribution may be made to projects and facilities within said area that are not exclusively for the benefits of the beneficiaries hereunder in proportion to the benefits to be received therefrom by said beneficiaries, as may be determined by the State of Utah through its duly authorized officers, commissions, or agencies. An annual report of its accounts, operations, and recommendations concerning the funds received hereunder shall be made by the State of Utah, through its duly authorized officers, commissions, or agencies, to the Secretary of the Interior and to the Area Director of the Bureau of Indian Affairs for the information of said beneficiaries.

18. The 1968 Amendment enlarged the class of beneficiaries of said oil and gas royalties from the approximately 1,500 Indians residing on the Aneth Extension to include within the class of beneficiaries, all of the Navajo Indians residing in San Juan County, Utah, which number approximately 15,000, thereby depriving the plaintiffs, as a class, of their right to receive the benefit of said royalties.

19. The defendant, Utah Board of Indian Affairs, has been and now is using and threatens to continue using and disbursing said 37½% of said royalties for the health, education and general welfare of the approximately 15,000 Navajo Indians residing in San Juan County and has not used and is not using said royalties solely for the use and benefit of the Indians

residing on the Aneth Extension as provided in the "1933 Act" and as determined by this Court in Sakezzie, et al. vs. The Utah State Indian Affairs Commission, et al. C-55-61.

The defendant, Utah Board of Indian Affairs, for the fiscal year ending June 30, 1969 authorized the expenditure of $193,000.00 for tuition, room and board, clothing and maintenance of Navajo Indian school children attending public schools and post-high school institutions. At that time, 788 Navajo Indian children in elementary and public schools in Utah were receiving out of the said 37½% royalty fund, support or partial support and maintenance from the defendant, Utah Board of Indian Affairs; 352 of those students were residing on the Aneth Extension, but 436 were residing in San Juan County, Utah, outside the Aneth Extension. Of the 52 post-high school graduates being supported in whole or in part out of the said royalty fund at that time, 26 resided on the Aneth Extension and 26 resided in San Juan County, Utah, outside the Aneth Extension. It cannot be ascertained without a detailed accounting what amounts were expended for the benefit of those Indian students residing on the Aneth Extension and what amounts were expended for those residing outside the Aneth Extension, what other amounts, if any, were expended from said royalty fund for other purposes for the benefit of Indians residing outside the Aneth Extension and what amounts, if any, were expended from the funds accrued in said royalty fund prior to the enactment of the 1968 Amendment for the benefit of Indians residing outside the Aneth Extension.

Conclusions of Law

1. The Court has jurisdiction of the subject matter of this action and of the person of the original defendants and of the defendants who have become such since the filing of the Amended Complaint.

2. This action is properly maintainable as a class action under Rule 23 (a) and (b) (2) of the Federal Rules of Civil Procedure.

3. Neither the United States of America nor the Navajo Indian Tribe is a necessary or indispensable party to the full adjudication of this action.

4. The relief sought by plaintiffs in this action requires no action by and imposes no restraint upon either the United States of America or the Navajo Tribe.

5. The State of Utah has no immunity from this action. This action has no impact on the governmental actions of the State of Utah because the said royalty funds are not State revenues and are not disbursed to fulfill State governmental obligations and the State of Utah has by the enactment of Section 6, Chapter 139, Laws of Utah 1965, waived its immunity from suit.

6. The legal effect of the 1933 Act is a complete disclaimer on the part of the United States of any right, title, or interest in the Aneth Extension, including all minerals therein, and the only title which remained in the United States was and is merely a dry, legal title.

7. The title, ownership and/or beneficial use of 62½% of the royalties derived from tribal oil and gas leases covering parts of the Aneth Extension is not involved in this action and plaintiffs are not in this action contesting the provisions of the 1933 Act

creating a trust covering 37½% of such royalties for the benefit of the plaintiffs.

8. Plaintiffs and the class they represent are the sole beneficial owners of the said 37½% of the royalties derived from the tribal oil and gas leases on the Aneth Extension.

9. The ownership of the plaintiffs in said 37½% of the royalties derived from tribal leases on the Aneth Extension is a community title.

10. Plaintiffs are entitled to an order directing defendants within 30 days to file with the Court those monthly written reports decreed in Sakezzie, et al. vs. The Utah State Indian Affairs Commission, et al., for the periods from February 25, 1963 to May 17, 1968, and from May 17, 1968 to the present. Said written reports shall show the amount of the fund, new increments, administrative expenses charged against the fund, other expenditures or disbursements from the fund, including the person or persons to whom the disbursements were made and the purposes of said disbursements, commitments against the fund, whether tentative or permanent but not expended, and a description of the projects which may involve future expenditures or disbursements from said fund.

11. Plaintiffs are entitled to an interlocutory decree, subject to revision pending review by the Court of said accounting, declaring that:

a. The plaintiffs and the class they represent are the beneficial owners of the 37½% royalty fund as determined in Sakezzie, et al. vs. The Utah State Indian Affairs Commission, et al., and

b. The 1968 Amendment to Public Law No. 90-306 (82 Stat. 121) is unconstitutional and in contravention of Amendment V of the United

States Constitution insofar as the 1968 Amendment changes the class created by the 1933 Act and/or the purposes for which said royalty fund can be expended.

12. The Court retains jurisdiction and will consider any additional evidence and make such further orders as may be necessary.

13. Following said accounting and proceedings, the Court will enter a final judgment and decree in accordance with these Findings of Fact and Conclusions of Law and in accordance with any additional Findings of Fact and Conclusions of Law which the Court may determine to be equitable and proper.

Signed this 17 day of Feb., 1972.

/s/ Willis W. Ritter
Chief Judge
United States District Court
for the District of Utah,
Central Division

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH CENTRAL DIVISION

Civil No. C-21-70

[Filed in United States District Court, District of Utah. Time: Mar. 20, 1972. /s/ Andrew John Brennan, Clerk.]

JAMES JIM, TOM BELETSO, SETH BIGMAN, and DAVID KING, PLAINTIFFS

vs.

STATE OF UTAH, UTAH BOARD OF INDIAN AFFAIRS, JOHN BOYDEN, LYMAN TYLER, DON E. SMITH, TINA WILLIE, HOMEY SECAKUKU, FRANK L. TIMBIMBOO and MCKAY PICKYVIT, DEFENDANTS,

UNITED STATES OF AMERICA, INTERVENOR

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that the United States of America, Intervenor, hereby appeals to the Supreme Court of the United States of America from the Interlocutory Decree and Order entered in this action the 17th day of February, 1972.

This appeal is taken pursuant to 28 U.S.C. Sec. 1252.

DATED this 20th day of March, 1972.

/s/ C. Nelson Day
C. NELSON DAY
United States Attorney
Attorney for United States
of America, Intervenor

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